



Warning against providing false or misleading information

The finalisation of a long-running case against Westpoint Realty Pty Ltd (Westpoint) (in liquidation) and its Director, Norman Carey, on 12 March 2015 highlights the importance of your obligations under the Australian Consumer Law and the Code of Conduct for Agents and Sales Representatives 2011 (the Code).

Mr Carey was found guilty on 11 February 2011 of five charges of breaching the Fair Trading Act in relation to the sale of a residential property development in Rivervale in 2005. The Supreme Court dismissed Mr Carey's first appeal on 10 January 2012 and the Court of Appeal dismissed a second appeal on 28 August 2013. Westpoint was also convicted, but did not appeal.

The original trial found that the company, via its agents, misled purchasers of units in a development by falsely informing them that there had been indefinite delays to the project due to planning approvals. The agents caused purchasers to terminate their contacts of sale, then each of the units were re-sold at a higher price within a short period of time.

It should be noted that the Australian Consumer Law, which was enacted in January 2011, prohibits a person from making false or misleading representations to consumers. In Western Australia, a maximum penalty of \$36,000 exists for individuals and \$180,000 for corporations.

In addition rule 7(1) of the Code requires agents and sales representatives to act fairly and honestly. Rule 7(2) of the Code compels agents and sales representatives to not knowingly mislead or deceive any party in a negotiation or transaction and rule 7(3) of the Code stipulates that an agent must not engage in harsh or unconscionable conduct.

Commissioner for Consumer Protection Anne Driscoll welcomed the decision by the Court citing that "It highlights the need for those involved in promoting property to be completely honest in their dealings with clients and potential buyers. Property transactions must be totally transparent and the perpetrators of deception cannot be rewarded and must face the consequences of their actions."

Information on the obligations of real estate agents and sales representatives is available on the Consumer Protection website: www.commerce.wa.gov.au/cp/realestate or enquiries can be made by email: consumer@commerce.wa.gov.au or by calling **1300 30 40 54**.